

1 go up because there's an older population.

2 Q And how do you get that conclusion?

3 A Look at the nonmalignants, a few pages  
4 earlier than where you just were. Look for the  
5 column that has nonmalignants. It's the group  
6 called "average settlement.

7 Q By the way, are these settlements after  
8 you've redistributed the unknowns according to your  
9 matrix?

10 A No. We don't redistribute unknowns for  
11 resolved claims.

12 Q So we're looking in the nonmal, I think  
13 '92 to look at again, and you're showing for the 92,  
14 your computation is that for under 60 the amount is  
15 4,529 versus 5,623. Did I read that right?

16 A Yes; that's correct. In the prior year,  
17 the pattern was reversed.

18 Q Yes. It seems to be reversed actually  
19 in -- in the earlier years, '86 through '88, the  
20 under 60 average is higher than the 81 and over  
21 average; isn't that true?

22 A That's true.

23 Q And by '97, it happens to reverse again in  
24 '97, isn't that right, that the under 60 averages is  
25 higher than the over 80 average?

1           A       Yes, but it's lower than the people in  
2       their 70s or even 60s. There, the age effect is  
3       pretty flat, tending somewhat probably higher in the  
4       older people with the people over 80 not having the  
5       most.

6           Q       Can you explain why the average is dropped  
7       down between '97 and '98 in your computation?

8           A       I think it's because in '98, there were a  
9       large number of settlements for cases that weren't  
10      filed previous -- that either had been recently  
11      filed -- Georgine had just been overturned by the  
12      Supreme Court in the middle of '97. Over the next  
13      18 months, lots of claims were filed, and I believe  
14      a lot of them were settled.

15          Q       You think '98 is a bigger year?

16          A       It's certainly bigger than '97. If you  
17      turn two pages earlier, there's a lot of information  
18      in this, Ralph. That's one of the reasons it's  
19      reprinted. If you look at the table that just  
20      says "settlements," these are the number of cases  
21      that were settled. Positive settlement is the  
22      number that were settled with money.

23                   That's probably actually the better one to  
24      look at and if you look at the row '97, for year  
25      '97, there were a total of 6576 nonmalignant claims

1 settled in 1997. That's the full right-hand column,  
2 6576. The next two years, there were almost 40,000  
3 claims resolved each year. So you had a huge influx  
4 of claims and a large increase in settlements in '98  
5 and '99. A lot of those were group settlements  
6 settled for a low amount of money.

7 Q What do you mean when you say there's a  
8 lot of information in here?

9 A I just gave you an illustration of that.  
10 I'm sure it will be a potential opportunity for  
11 cross-examination.

12 MR. MILLER: Why don't we take a break for  
13 lunch.

14 VIDEO OPERATOR: We're off the record.  
15 The time is approximately 1:18 p.m.

16 (Whereupon, at 1:18 p.m., the deposition  
17 was recessed, to be reconvened at 2:00 p.m. this  
18 same day.)  
19  
20  
21  
22  
23  
24  
25

1 AFTERNOON SESSION (2:04 p.m.)

2 Whereupon,

3 MARK A. PETERSON

4 resumed the stand and, having been previously duly  
5 sworn, was examined and testified further as  
6 follows:

7 VIDEO OPERATOR: We are back on the  
8 record. The time is approximately 2:03 p.m.

9 EXAMINATION (Continued)

10 BY MR. MILLER:

11 Q Dr. Peterson, do you have anything you  
12 want to change or correct from the morning testimony  
13 that you know of?

14 A Nothing I can recall now, no.

15 Q Going back to Exhibit 3 for a moment.

16 A Exhibit 3, oh yes, the opinion.

17 Q The new materials that we received --

18 A That's Exhibit 2.

19 Q I'm sorry, I misspoke. Exhibit 2, then,  
20 is what I wanted to go to.

21 A Yes.

22 Q Where did you get the age of the claimants  
23 in this document that shows ages, the first one, I  
24 guess?

25 A I think we had it in the database.

1 Q Did you cross-reference any other  
2 databases to get the age, or do you know?

3 A I think it was just -- it's my  
4 recollection it's just the GAF data. If that turns  
5 out -- I'll double-check and get back to you if it's  
6 different.

7 Q I don't want to mislead you. Let me just  
8 tell you that we're having trouble find the age in  
9 the existing database and wonder if a  
10 cross-reference was done to some other database to  
11 get age. You don't happen to know that --

12 A I will let you know. I believe it wasn't  
13 and I asked Dan. Dan is on his way to Florida right  
14 now. I'll ask him, and we could send you that  
15 variable with some identifying thing you can link it  
16 in so you can use it.

17 Q We'd appreciate that.

18 A Sure.

19 Q Did you in any part of your work in this  
20 part of the case cross-reference the Manville  
21 database for any purpose?

22 A I don't believe so.

23 Q It is possible, of course, to use Social  
24 Security numbers from, say, the GAF database and go  
25 out and get information on those same Social

1 Security numbers in something like the Manville  
2 database; is that correct?

3 A One can do that.

4 Q And in this case, you were actually  
5 working with a CCR database in most instances; isn't  
6 that true?

7 A It was a database created by CCR, yes.

8 Q Was there a separate GAF database on the  
9 CCR data that you had to work with in this matter?

10 A There was another database that was  
11 provided, I believe, that was attached to one of the  
12 earlier filings in this case, court filings, and it  
13 was a CCR. It had data not only about the amount  
14 paid by GAF, but also by CCR as a whole.

15 Q And did you understand that that was  
16 generated by GAF as opposed to by CCR?

17 A My understanding is these are all CCR  
18 databases, both of them, but they were provided by  
19 GAF. And beyond that, I don't know. It's my  
20 understanding that the GAF -- that the CCR data is  
21 confidential. We were surprised and delighted to  
22 get it.

23 Q Did you -- why were you surprised and  
24 delighted to get it?

25 A Well, because we didn't otherwise have

1 data on CCR payment amounts. They had been kept  
2 confidential.

3 Q Why did you decide to break these age  
4 groupings down at 60, 70, 80, as opposed to, for  
5 example, 60 to 65, 66 to 70, 71 to 75, and so on?

6 A If you disaggregated it further, you'd  
7 begin to run into small amounts of data, and you  
8 would get not only small amounts of data, but you'd  
9 get more variability, and patterns might be harder  
10 to look at.

11 Q Why did you look at 0 to 60 as opposed to,  
12 say, 0 to 55, 55 to 65, 65 to 74, and so on?

13 A These were approximately decades, and 0 to  
14 60 was just -- 0 to 60 is effectively 50 to 60,  
15 because there are very few people that are less than  
16 50. But both top and bottom categories are  
17 open-ended. There aren't many people beyond the  
18 10-year period at the top or bottom.

19 Q Did you perform any regression analyses in  
20 connection with your work on -- reflected in Exhibit  
21 2?

22 A No. We just -- these are just -- no.

23 Q Did you perform any regression analyses  
24 with regard to anything you did in your report in  
25 this case?

1           A     We might have done some early preliminary  
2 regressions. I seem to recall we did. But we  
3 haven't reported on any.

4           Q     Did you use the results of any of your  
5 regression analyses in your report?

6           A     No.

7           Q     Why didn't you do regression analysis to  
8 see if age was statistically significant?

9           A     As you saw, the data are frequently  
10 nonlinear. So a linear regression analysis wouldn't  
11 necessarily capture what the trend is. Secondly, we  
12 just did this on a quick basis prior to the  
13 deposition. And third, both our report and  
14 Dr. Martin's report reported the data in the  
15 cross-tabular version that we have here.

16          Q     Do you recall in the Owens Corning work  
17 that he did, that Tom Vasquez ran regressions to try  
18 to determine whether their age was significant or  
19 not?

20          A     He did run some regressions, yes.

21          Q     Do you recall that he determined some of  
22 the break points were not at even ages?

23          A     I don't know how you determine that in any  
24 reliable manner.

25          Q     Pardon me?



1           A     I don't know how you determine that in any  
2     reliable manner. There's another reason we didn't  
3     run the regressions, because these are skewed  
4     distributions.

5           Q     What is a skewed distribution mean as  
6     you've used it in that answer?

7           A     It's not symmetrical around the median or  
8     the mean. It tends to go far off in the direction  
9     of high values, and the regression analysis isn't  
10    particularly appropriate when your underlying data  
11    does not have -- it moves significantly away from a  
12    normal distribution, just because of the nature of  
13    regression analysis and correlation analysis. So in  
14    order to correct for that, you would need to  
15    essentially transform your data to get a more normal  
16    database. Usually -- we've done this -- we haven't  
17    done this in asbestos cases, but we've done it in  
18    other kinds of data analysis. When you transform  
19    it, you then lose the impact of the most extreme  
20    large verdicts.

21                   And to some degree, I think that's what's  
22    happening in meso. The reason that meso has a  
23    pattern is it's not representative of the general  
24    pattern of settlements for meso but a reflection of  
25    a few large cases. We've seen in other cases that

1 the -- that the consistently, the medians, the 50  
2 percentile, are higher at one age even for  
3 mesothelioma.

4 So regression is not -- it's somewhat  
5 misleading. It was misleading. What made me think  
6 of this was when I was thinking of Doctor Vasquez's  
7 analysis. Regression analysis wasn't an appropriate  
8 analysis there, and I don't think it's an  
9 appropriate one here.

10 Q Why don't you go back to your answer where  
11 you directed our attention to a group of years that  
12 you said were not representative because, as I  
13 recall, claims filings were down, in part, because  
14 the plaintiffs' lawyers were concentrating on the  
15 Manville filings. Do you remember that answer?

16 A I didn't say what you said.

17 Q That's not a very good summary. That's  
18 one of the advantages to having the text now. Can  
19 you identify for us that chart again so we can talk  
20 about it where you've pointed out a group of years  
21 that you said were not representative?

22 A g3 is the document, the two-page document  
23 that's the beginning in Exhibit 2, has g3 in the  
24 upper left-hand corner. It's page 2 of 2.

25 Q I don't have a g3, I don't think, do I?

1           A     If you give it to me, I'll find it for  
2     you.

3           Q     Thank you.

4           A     Actually, it's the second page.

5           Q     I see. g3 is in the upper left-hand  
6     corner; right?

7           A     Yes, that's correct.

8           Q     It has 8/08/05 as a date?

9           A     Yes; that's correct.

10          Q     And we were looking at the -- I guess we  
11     were looking at the nonmal column, the nonmal  
12     disease.

13          A     Yes.

14          Q     And looking at the column marked zero, you  
15     were saying that you thought '88 and '89 were the  
16     diagnosis year filings were down because of what?  
17     Could you repeat that for us again?

18          A     It isn't the filings are down, but there's  
19     a lower percentage of claims for the period of  
20     essentially 88 through 90 where it's the lowest.  
21     The percent of claims, nonmalignant claims filed in  
22     years '88 through '90 were lower than any other  
23     period of time. And indeed, the period of time from  
24     '87 to '91 were lower than any other period of time.

25          Q     When did the CCR begin to operate?

1           A       CCR began in 1988, '88, yes.

2           Q       Did you do any analysis to figure out  
3 whether the creation of the CCR might have affected  
4 these rates?

5           A       Could have. Let me think about that a  
6 moment. Could have, because during the -- although  
7 it was three years that they were going down, I  
8 think it probably had something to do with  
9 priorities of activity on the part of the  
10 plaintiffs' lawyers. Remember, the filings of  
11 claims are a function of the activities of  
12 plaintiffs' law firms primarily, and especially many  
13 for nonmalignant claims, which may get filed at  
14 different times with different defendants. Each law  
15 firm has a limited capacity of paralegal talent to  
16 do work. So they have to choose who they're going  
17 to send their claims to.

18                   In this period of time, one, you had  
19 Manville coming out where it was important to get  
20 early in the FIFO queue. And, second, you had this  
21 new CCR being formed where there probably wasn't as  
22 much urgency to get filed with CCR because it's  
23 going to take them some time to get up and running.

24                   So if you're a plaintiffs' lawyer and you  
25 have limited resources and it's important to get as

1 far ahead in the line in Manville as you could,  
2 you'd send your claims to Manville, not to CCR.

3 Q First of all, have you done any analysis  
4 to support that conclusion?

5 A There's a whole lot of conclusions in that  
6 statement. Which one are you talking about?

7 Q Well, first of all, to support the  
8 conclusion that you think that limited capacity in  
9 the plaintiffs' law firms is the explanation for  
10 this lower percentage of filing the same year of  
11 diagnosis.

12 MR. FINCH: Object to form.

13 THE WITNESS: First of all, I know there's  
14 a limited capacity of law firms. I've talked with  
15 paralegals, and I've talked with law firms again and  
16 again over the 20-some years of my work in asbestos  
17 litigation. I've undertaken data collection  
18 processes with plaintiffs' law firms. So I  
19 understand their limits.

20 Secondly, I understand that plaintiffs'  
21 law firms will tend to focus and direct their cases  
22 to particular companies. I've seen that again as a  
23 researcher, and I've seen it as a trustee, and I've  
24 seen it as a director of trust services.

25 BY MR. MILLER:

1           Q     I think that's a little facetious. I  
2     think someone sent me a note and said do you think  
3     if the lawyers came back from the beach, they would  
4     have more resources, based upon one of your earlier  
5     answers. I will withdraw that question.

6           A     They're tight with money. Let's put it  
7     that way.

8           Q     Legal assistants are one of the important  
9     resources in plaintiffs' law firms in asbestos  
10    litigation; isn't that true?

11          A     Sure.

12          Q     A lot of work can be done by legal  
13    assistants to gather data and prepare materials;  
14    correct?

15          A     Of course.

16          Q     If there was a significant economic  
17    incentive to go ahead and increase capacity from an  
18    economic standpoint, wouldn't it make sense for the  
19    law firms to add temporary capacity and get things  
20    done, rather than defer for a number of years  
21    payments for their clients and for their own fees?

22          A     Not necessarily.

23          Q     Why not?

24          A     Well, you can't hire temporary capacity.  
25    There isn't a paralegal on the shelf service.

1 Q Sure there is.

2 A No, there isn't. To get someone familiar  
3 with the kinds of exposures and medical records and  
4 processes in your office, you can't just go and hire  
5 these people on a temporary basis, and they wouldn't  
6 want to do so anyway because there are matters of  
7 confidences in these cases.

8 Q Do you know how many temporary legal  
9 services there are in the country?

10 A I have no idea.

11 Q So what is your analytic basis -- can you  
12 point to any documents anywhere to say that the 24.7  
13 number in 1988 on page g3, 2 of 2, has something to  
14 do with limited capacity of the plaintiffs' law  
15 firms?

16 A The document or the data that show the  
17 results. These are anomalous years. For whatever  
18 reason, they don't represent a general practice for  
19 which '92 and '93 are abnormal. It's those earlier  
20 years that are abnormal, which is precisely the  
21 opposite of Dr. Martin's conclusions.

22 Q How many of the earlier years are  
23 abnormal? Everything from 1980 through 1987?

24 MR. FINCH: Object to form.

25 THE WITNESS: You can look at the data

1     yourself.

2                   BY MR. MILLER:

3           Q     Well, no, actually, I can't, Dr. Peterson.  
4     That's the whole point, is that we're trying to  
5     figure out how you look at the data. So I'm trying  
6     to ask you my question. Let me restate it again.  
7     Are you saying that the years from 1980 through 1987  
8     are all anomalous -- I'm sorry -- yes, yes. Let me  
9     start over. How many of the years prior to 1992 are  
10    you saying are anomalous?

11           A     I'm saying that the four years, really the  
12    five years preceding 1992 represent the lowest  
13    percent of claims that were filed in the year, in  
14    the same year in which they were diagnosed. In  
15    every other year, it was greater than that.

16           Q     Those would be the most recent years if  
17    someone were looking at the data as of 1993,  
18    however; is that correct?

19           A     No.

20           Q     Well, '92, where there was a step-up in  
21    '93, would be in the most recent years, and then if  
22    you went back five years, for example, you go back  
23    to 1989; right?

24           A     The most recent years are 1992 and 1993.

25           Q     My question wasn't very good. Let me try



1 again. If one had gone back five years and were  
2 just looking at this column marked zero, you would  
3 see the years '89, '90, '91, '92, and '93? That  
4 would be the five years of data available if it were  
5 contemporaneous data as of 1993; right? As of 1994,  
6 early 1994?

7 A Could you read that question, please?

8 Q Let me do it again. I garbled it up. In  
9 early 1994, assuming you had complete data for 1993,  
10 the five preceding years would be '93, '92, '91,  
11 '90, and '89; true?

12 A Yes.

13 Q And if one were looking at these data, one  
14 would see 24.2 for '89, 25.0 for '90, and 33.6 for  
15 '91 in that five-year window; correct?

16 A And 46.3 in '92 and 42.2 in '93.

17 Q Right. So that would be three years that  
18 were lower and two years that were higher in that  
19 five-year window; is that correct?

20 A If you were looking at five years, you  
21 would observe the numbers that are here, obviously.

22 Q And do you know whether anyone looked at  
23 these data as of 1994 and concluded, or similar  
24 data, that there appeared to be some acceleration of  
25 filings in '92 and '93?

1 A I have no idea.

2 Q Did you conclude at any point that there  
3 might be an acceleration of filings because of  
4 Georgine?

5 A Oh, I wrote that in my report. I  
6 testified earlier today to that, that there was  
7 likely that there was some acceleration of filings,  
8 yes.

9 Q So --

10 A Some.

11 Q Have you tried to quantify how much?

12 A You cannot quantify something like that.

13 Q You cannot quantify?

14 A No, because essentially, you're comparing  
15 it to a hypothetical. When would they have been  
16 filed if you didn't have Georgine, and the world  
17 isn't constructed that way.

18 Q Which way is the world not constructed?  
19 That you can't compare to events that didn't occur?

20 A You can't observe something that didn't  
21 occur. You can't count it. You can make inferences  
22 and estimates, but you can't count it.

23 Q You have from time to time seen what you  
24 would characterize as surges in some of the data; is  
25 that true?

1           A     The only time I recall having testified  
2     about that was in Fibreboard.

3           Q     What did you testify about it in  
4     Fibreboard, as you recall?

5           A     You may regret asking this question. In  
6     Fibreboard, I testified about a surge, a permanent  
7     acceleration, a temporary acceleration, a number of  
8     time-relevant events that happened with the --  
9     essentially, the reaching of settlements between  
10    Fibreboard and its insurance companies and the  
11    settlement of lots of the pending claims prior to  
12    filing of the Ahern class action, and the surge was  
13    meant to describe the claims that were -- that would  
14    not have otherwise been filed but were filed because  
15    of those two events, the insurance settlement and  
16    the negotiation of the several pending claims by  
17    Fibreboard.

18          Q     And that was an analysis where you looked,  
19    for example, at certain law firms that had a history  
20    of filing claims and new law firms that showed up  
21    that did not have a history of filing claims; is  
22    that correct?

23          A     In that case, that's what it is, yes.

24          Q     And you concluded that there were some new  
25    filings that you would disregard because they seemed

1 to be a part of the surge; is that correct?

2 A I don't recall that I disregarded them,  
3 but I didn't regard them as being claims that would  
4 likely be a basis for forecasting future claims.

5 Q You didn't think they were a long-term  
6 trend?

7 A Barring some recurrence of something else  
8 like this, I think that's probably a fair  
9 description. They were predominantly maritime legal  
10 claims.

11 Q That's what's sometimes known as the  
12 Jacques law firm?

13 A Yes.

14 Q Did you do a sensitivity analysis where  
15 you disregarded the nonmalignant filing rates in '92  
16 and '93 in this engagement involving GAF?

17 A I didn't think it was appropriate to do  
18 so, so I didn't do so.

19 Q Did you do an analysis in this engagement  
20 where you used some sort of average filing rate from  
21 1980 through 1993 rather than using the '92-'93  
22 filing rates?

23 A I can't answer that question.

24 Q Why not?

25 A Because you've given me -- you've not

1 given me -- your "rather" is not accurate.

2 Q Let's drop the "rather." Did you do any  
3 analysis where you used an average rate of filing  
4 for the nonmalignants that started in 1980 and went  
5 through 1993?

6 A No.

7 Q What different time periods did you look  
8 at for filing rates in your analysis in this case?

9 A For nonmalignant claims or for all claims?

10 Q Why don't you do both answers, please,  
11 nonmalignants and then all claims.

12 A I think we looked at -- excuse me a  
13 minute. We have two sections in the report where we  
14 used derived claims, section 6 and section 7. I  
15 think in section 7, we used the period 1996 through  
16 1998, and in section 6, we used 1990 to '94. I  
17 think we also looked at just the last -- I'm sorry,  
18 1990 through 1993. I think we also looked at, but  
19 I'm not certain, the period '92 and '93 by  
20 themselves, and then the period '88 through '93.  
21 They didn't give much different results for cancers.

22 For nonmalignants, I think we might have  
23 looked at the periods -- I think we used the same  
24 periods and examined them for nonmalignants in each  
25 of the cases. What we reported is what I described

1 at the beginning of this answer.

2 Q Where did you summarize what you looked at  
3 for nonmalignants in your report, please, sir? You  
4 seem to be looking at a page. I want to make sure  
5 we're all looking at the same page.

6 A Sure. On page 29, the first paragraph.  
7 Two-thirds of the way through the paragraph, "in the  
8 GAF forecasts, I calculated the nonmalignant  
9 multiplier with the same four-year base period, 1990  
10 to 1999. " And then for -- and then in the next  
11 paragraph, the first two sentences describes the  
12 nonmalignant multiplier, calculating different  
13 periods. That paragraph addresses that issue. So  
14 using the period '90 to '93, we had 7.8 nonmalignant  
15 claims for every cancer filing.

16 If we used '92 to '93 we would have had a  
17 nonmalignant multiplier of 9.2. If we used the  
18 period '98 to 1991, we would have had a nonmalignant  
19 multiplier of 6.5. So you can determine what would  
20 be the number of nonmalignant claims just by making  
21 adjustments, either 9.2 divided by 7.8 would be the  
22 number of nonmalignant claims if we used only the  
23 last two years as the basis for our forecast. 6.5  
24 divided by 7.8 would be the number if you used '98  
25 through -- 1988 through 1991 as the basis for

1 calculating the nonmalignant multiplier.

2 In section 7, I think we used the same  
3 period as with the cancers, but let me confirm. I  
4 believe we used '96 to '98 in section 7.

5 Q Where are you looking at?

6 A That's page 41.

7 Q And where on page 41?

8 A The bottom of page 41, I think, but let  
9 me -- it describes 1966 to 1968. Let me verify  
10 that's the period we used.

11 MR. FINCH: Did you mean to say 1996 to  
12 1998?

13 THE WITNESS: Yes, I'm tripping over  
14 numbers. 1996 to 1998. I believe that's what we  
15 used, although I don't think it says it here. That  
16 is the period we used for cancers, though.

17 BY MR. MILLER:

18 Q Let's go back to page 29 for a moment.

19 A Sure.

20 Q The paragraph to which you were referring,  
21 which I guess is the second paragraph on the page --  
22 I'm not clear on whether that first one is a partial  
23 paragraph or not.

24 A It's a full paragraph.

25 Q Okay. There is a sentence in the middle,

1 and let's see if I can read this right. "In effect,  
2 this calculation assumes that, of the increase in  
3 GAF's nonmalignancy claim filings during 1992 and  
4 1993, about half represents the transitory effects  
5 of the Georgine negotiations and about half  
6 represents a long-term increase in filings of  
7 nonmalignancy claims."

8 Did I read that right?

9 A Yes, you did.

10 Q What was your basis for making an  
11 assumption that that was about half and half as  
12 opposed to, say, one-third/two-thirds, 10 percent/90  
13 percent?

14 A I'm describing what the effect of the  
15 assumptions we did. I'm describing its effect. I'm  
16 not saying that's the proper number a priori. But  
17 we used 7.8 percent. The inflation -- the increase  
18 rate or --

19 Q 7.8 percent or 7.8 times?

20 A 7.8 times. The actual observed ratio of  
21 nonmalignant to cancer claims during this period is  
22 9.2. Prior to this period of -- prior to 1992, the  
23 ratio is 6.5. So you've got an increase of 2.7 --  
24 it goes from 6.5 to 9.2.

25 So you're getting 2.7 more nonmalignant



1 claims for each cancer claim if you use solely the  
2 later period. We don't use that. We only use 7.8.  
3 So rather than going up 2.7 additional nonmalignant  
4 claims, we're only going up 1.3. So it's half the  
5 difference between those two periods of time.

6 Q Do you have any sort of empirical analysis  
7 to show why you went up any or that amount, other  
8 than what's reported here?

9 A I think there's no empirical evidence that  
10 says we needed to assume there's any acceleration.  
11 There's no evidence of that. I think, though,  
12 that -- my expectation is that the aversion that  
13 some people have for the -- some plaintiffs' lawyers  
14 and claimants have for the Georgine class action  
15 would have caused people to file somewhat more  
16 quickly.

17 So I think there needs to be some  
18 consideration of a -- some recognition to some  
19 degree that the large number of nonmalignant claims  
20 filed in these two years are the result of attempts  
21 to avoid being precluded in Georgine. So you need  
22 to make some adjustment for it.

23 Q I think you recognized in 1994 that some  
24 plaintiffs' lawyers didn't like the Georgine futures  
25 settlement tables; isn't that true?

1 A I just said it again, yes.

2 Q I'm saying but you recognized that in '94?

3 A Yes. I think most people did.

4 Q You also recognized in '94 that some  
5 plaintiffs' lawyers didn't like the Ahern futures  
6 settlement; right?

7 A Yes, although there were more things going  
8 no Ahern than there were here, but that was a  
9 consideration in Ahern.

10 Q Pleural plaques were not compensated under  
11 Georgine on a contemporary basis after the  
12 settlement became effective; isn't that true? I  
13 probably didn't say that very well.

14 A The settlement never became effective.

15 Q Well, but the announced terms of the  
16 settlement were such that a pleural plaque filed  
17 after the effective date was going to be a deferred  
18 payment; isn't that true?

19 A If the Georgine class action ever  
20 became -- was approved, yes, that would have been  
21 one of its effects.

22 Q But pleural plaques that were filed  
23 earlier than that were going to be compensated  
24 without a deferral; wasn't that true?

25 A In many states, not all, many localities,

1 not all.

2 Q In those localities where the pleural  
3 plaques were going to be compensated if they were  
4 treated as pending claims, that created an economic  
5 incentive for plaintiffs' lawyers to go ahead and  
6 get any pleural plaque claims on file, didn't it?

7 A If they had them in those jurisdictions,  
8 that would have been prudent. Well, it depends upon  
9 what they thought was going to happen with Georgine.

10 Q Regardless of what they thought was going  
11 to happen in Georgine, to protect their clients from  
12 the contingency that Georgine came in if they didn't  
13 opt out, it would be prudent for them to go ahead  
14 and get it on file, wouldn't it?

15 A It would be a consideration, certainly.

16 Q When claims are accelerated, isn't one of  
17 the expected consequences that in the following  
18 years, notices claims, obviously, are not there to  
19 be filed, so there is often a drop that is seen  
20 after an acceleration?

21 A I agree with the first part. If a claim  
22 is filed earlier, it can't be filed later. With  
23 regard to the drop, this is just one of a number of  
24 things going on at any one point in time. So all  
25 things equal, yes, you would see it, but rarely in

1 asbestos litigation are all things equal.

2 Q What do you mean rarely are all things  
3 equal?

4 A Things are changing all the time.

5 Q There are multiple variables that are  
6 shifting, is that correct, in these -- affecting  
7 some of these events?

8 A Events are changing all the time.  
9 Incentives of parties are changing over time. Lots  
10 of things are changing. It's a dynamic litigation,  
11 which is one of the reasons that you wouldn't want  
12 to calculate filing rates for the period 1980  
13 through 1993, because so much has changed over that  
14 period of time.

15 Q I'm going to go back to futures agreements  
16 for a moment and clarify some things that we talked  
17 about before. Did you look to see what percentage  
18 of the pending claims in 1994 against GAF were with  
19 law firms that had a futures agreement of some kind  
20 in place?

21 A No.

22 Q Do you have any idea as you sit here  
23 whether that was 20 percent, 50 percent, 70 percent,  
24 or somewhere in between those things?

25 A There were a number of -- I take issue

1 with the term "futures agreement." Provisions of  
2 agreements that CCR reached with law firms had  
3 elements in them addressing future claims. I don't  
4 believe that they were generally separate  
5 agreements, as I testified this morning. Lots of  
6 lawyers settled their inventory of pending claims  
7 with CCR prior to the stay in the Georgine  
8 litigation. So that would -- I'll just leave it at  
9 that.

10 Q Let's define our term. First of all, do  
11 you know if there were any stand-alone agreements  
12 dealing with the future as opposed to inventory  
13 settlements that included futures terms?

14 A I don't think I know of any. There may  
15 have been. I didn't look at every agreement. But  
16 where I've generally seen it is in the context of a  
17 broader agreement.

18 Q Just to be sure we're all communicating  
19 and a jury might understand what we're talking about  
20 if we ever had to show this to them, what did you  
21 mean by "inventory settlements" in your answer?

22 A It's a negotiation that leads to a  
23 settlement where a law firm will settle all or most  
24 of the claims that it then represents and that are  
25 then pending against a particular defendant or, in

1 that it represents who have nonmalignant diseases  
2 that while it's filing lawsuits against Owens  
3 Corning and Pittsburgh Corning and a bunch of other  
4 companies, it would not file lawsuits against the  
5 CCR members because of some agreement it reached  
6 four or five years previously. That would be a  
7 difficult, probably untenable position.

8 And finally, if they did take that  
9 position and refused to do that or they told someone  
10 when they were in an engagement situation that they  
11 were only going to file claims against some subset  
12 of defendants, most of those claims would go to  
13 different law firms who would not feel -- either  
14 were not parties to the agreements that have the  
15 future provisions or would feel no obligation to  
16 respect them.

17 And finally, I've never seen things like  
18 this honored. It's wishful thinking on the part of  
19 the defendants.

20 Q Do you believe that the plaintiffs'  
21 lawyers who entered into these provisions did not  
22 expect that they would ever have any effect?

23 A I have no idea what their expectations  
24 would be.

25 Q You're not suggesting that the plaintiffs'

1 lawyers intended to disregard the agreements, are  
2 you?

3 A I have no idea what their intentions were.  
4 I think their effect is that they would not be able  
5 practically to do that, and if they did, the claims  
6 would go elsewhere. If someone had a claim that was  
7 compensable under the law and they were told by a  
8 lawyer we're not going to do this because of some  
9 agreement, I mean, if I remember a potential  
10 plaintiff, I'd be out the door and go next door.

11 Q Do you think the plaintiffs in these  
12 cases, in general, do or don't rely on the advice  
13 they receive from the lawyers?

14 A Well, they hire them. They certainly rely  
15 on them to some degree. I don't think they would  
16 generally rely upon a lawyer who says well, you've  
17 got the right to sue this person, but we're not  
18 going to file a lawsuit because of some private  
19 agreement I have. I don't think that that's  
20 something that, if that's explained to the  
21 plaintiff, that they would regard very highly.

22 Q Do you think the lawyers entered into  
23 these agreements believing that they were going to  
24 harm their clients? In the future?

25 A Maybe they felt they weren't going to

1 represent those claimants, so that someone else  
2 would. That's the easiest way to avoid that  
3 conflict.

4 Q You mentioned before that one of the  
5 advantages perceived by the supporters of the  
6 Georgine settlement was faster payment for present  
7 claimants. Do you recall that?

8 A That was -- that was a bargained-for  
9 promise which, it's my understanding, wasn't very  
10 well achieved.

11 Q Well, I think my question was whether that  
12 was something that you thought that the lawyers  
13 believed who were supporting the class action  
14 settlement, was one of the advantages to their  
15 clients, was faster payment than if they continued  
16 to litigate in the tort system.

17 A I would say that it is something they  
18 bargained for and felt that CCR owed them that  
19 obligation. That raises another issue, thank you,  
20 is that to the degree that CCR doesn't honor its  
21 part of these contracts, that the plaintiffs'  
22 lawyers, I'm sure, would have felt free to and maybe  
23 even obligated not to respect these future  
24 provisions.

25 Q Well --



1 A There would be no pro quo for the quid.

2 Q Well, in 1994, there was no reason to  
3 assume that either CCR or the plaintiffs' lawyers  
4 were going to dishonor their contractual  
5 commitments, was there?

6 A I think there was reason to believe that  
7 CCR couldn't honor its contractual commitments or at  
8 least that its contractual commitments were going to  
9 create significant backlogs of unpaid claims.

10 Q Why is that?

11 A Because there would be too many claims  
12 filed. They would run up against the caps, and  
13 they'd have to go over to the next year and the next  
14 year and the next year. The actual claims that  
15 would be filed would have exceeded the caps. That  
16 would have created -- I'm sorry. That's Georgine.  
17 That's not in the futures agreements. I beg your  
18 pardon.

19 Q Let me ask my question again.

20 A Thank you.

21 Q Do you have any reason to believe as you  
22 sit here today that the -- that there was a reason  
23 for people looking at these futures agreements to  
24 believe that the plaintiffs' lawyers did not intend  
25 to honor them, first of all?

1           A     I think that there's reason to believe  
2     that the plaintiffs' lawyers would have had great  
3     difficulty honoring them and that, in any event, it  
4     wouldn't limit the number of claims that were filed  
5     because there are always other law firms.

6           Q     Can you point to anyone other than perhaps  
7     yourself who was making that prediction in 19 --  
8     January of 1994 or earlier?

9           A     I don't know that anyone made a prediction  
10    one way or another about it. I have not heard -- I  
11    don't recall anyone discussing that one way or the  
12    other. I think it's the reasonable expectation of  
13    what would be the effect of these provisions.  
14    They're not obligatory with regard to claimants.

15          Q     In 1992, in the National Gypsum  
16    testimony -- let me rephrase that.

17                Do you recall when your testimony was in  
18    the National Gypsum trial?

19          A     January 1993.

20          Q     Right. In January of 1993, do you recall  
21    what your assumptions were about case flows under  
22    Georgine?

23          A     Under Georgine?

24          Q     Yes.

25          A     Yes. It depended upon the forecast.

1 There were 16 different forecasts or 32 different  
2 forecasts, some enormous number of forecasts. I  
3 remember Ms. Goldstein cross-examined me about that.  
4 Essentially, under the forecast that involved a flat  
5 propensity to sue, that the caps were generally  
6 blown.

7 Under those that had a decreasing  
8 propensity to sue, the caps -- the claims finds  
9 could be maintained. These are claims filed by  
10 National Gypsum. National Gypsum represented only  
11 69 percent of all the claims filed against CCR. GAF  
12 represented 91 percent of all the claims filed  
13 against CCR.

14 Q 91 percent?

15 A 91 percent of all claims in the CCR named  
16 GAF.

17 Q I understand.

18 A As opposed to 69 percent for National  
19 Gypsum.

20 Q What's the significance of that  
21 observation?

22 A It means that almost certainly, the caps  
23 would have been blown but with the number of claims  
24 filed against GAF.

25 Q Did you do an analysis by occupation in